IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9226 of 2002
With
SPECIAL CIVIL APPLICATION No. 9244 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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K.M. PATEL INSTITUTE OF PHYSIOTHERAPY - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :

Special Civil Application No.9226/2002

MR DC DAVE for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1,

Special Civil Application No.9244/2002

MR SAURIN MEHTA for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1,
MR MITUL SHELAT for Respondent(s):2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/10/2006

ORAL JUDGMENT

1. These petitions involve similar questions of law and facts. They have been heard together and are being disposed of by this common order.

2. The petitioners are educational institutions. They are questioning fee structure provided for by the State Government in their physiotherapy course. Shortly stated; facts as emerging in Special Civil Application No.9226/2006, which can be taken note of for both the petitions; are as follows :

2.1 The petitioner is an institute imparting education in physiotherapy courses. The Government as per the legal position obtaining at the relevant time was required to provide for a fee structure for different categories of students admitted by the petitioner-institution. As per the then prevailing scheme, three categories were envisaged. They included free/merit seats, payment seats and NRI seats.

2.2 These petitions have been filed aggrieved by a Government Resolution dated 13-11-2001 by which the existing fee structure was revised with effect from the term starting from June 2001 as follows :

"(A). Prior to June 2001.

	Category		
Courses	Free/Merit	Payment	NRI
B-Physiotherapy	Rs.2,000/-	Rs.60,000/-	US $ 5,000/-p.a.

(B)Revised from June 2001 (Irrespective of year of admission)

	Category		
Courses	Free/Merit	Payment	NRI
B-Physiotherapy	Rs.5,000/-	Rs.25,000/-	US $ 5,000/-p.a.

Enhanced fee rate will not be applicable to already admitted students till they clear their studies.
Excess fees collected for the academic year 2001-2002 to be refunded"

2.3 The petitioners point out that subsequently yet another resolution came to be passed by the Government on 7-2-2002 by which a new fee structure was provided to take effect from June 2002 as follows :

"1. The existing fee structure shown at below (A) is revised from the term June 2002 as shown in (B).

(A)Prior to JUNE 2002.

	Category		
Courses	Free/Merit	Payment	NRI
B-Physiotherapy	Rs.2,000/-	Rs.60,000/-	US $ 5,000/-p.a

(B) Revised from June 2002(Irrespective of year of admission)

	Category		
Courses	Free/Merit	Payment	NRI
B-Physiotherapy	Rs.5,000/-	Rs.25,000/-	US $ 5,000/-p.a

Enhanced fee rate will not be applicable to already admitted students till they clear their studies."

2.4 The above fee structure was once again modified by a subsequent resolution dated 19-10-2002. For the academic year 2002-2003, following fee structure was provided :

	Category		
Courses	Free/Merit	Payment	NRI
B-Physiotherapy	Rs.5,000/-	Rs.35,000/-	US $ 5,000/-p.a

2.5 The petitioners challenge this resolution passed by the Government in these petitions.

3. From the above fee structure provided by the

State Government in three different resolutions, it can be seen that initially by a resolution dated 13-11-2001, though fees for NRI seats remained unchanged, fee for merit seats was revised from Rs.2,000/- p.a. to Rs. 5,000 p.a. whereas fee for payment seats was brought down from Rs.60,000/-p.a. to Rs.25,000/- p.a.. Significantly, this resolution provided that though enhanced fee will not be applicable to students already admitted, excess fee collected from those students in whose cases there is reduction of fee, shall have to be refunded. It would thus mean that for payment seat categories, institution would have to refund the difference in fee already collected from the students. However, this anomaly was corrected in subsequent resolution dated 7-2-2002 whereby it was provided that enhanced fee rate will not be applicable to already admitted students till they clear their studies. However, corresponding requirement of refunding the fee already collected is not mentioned in this resolution. To that extent namely making the modified fee

structure applicable retrospectively, grievance of the petitioners was resolved by the Government itself in the subsequent resolution dated 7-2-2002. In the later resolution dated 19-10-2002, though fees for merit seats and NRI quota seats remained unchanged, rate fixed for payment seats was increased from Rs. 25,000/- p.a. to Rs. 35,000/- p.a. In short grievance of the petitioners is that the Government fixed Rs. 35,000/- p.a. as fee to be collected for Physiotherapy course in payment seats without proper basis. It is the case of the petitioners that the fee so fixed is grossly inadequate; that there was no material before the Government to fix the fee at the said rate; that the petitioners were not given appropriate hearing before fixing the fee structure and that in any case the fee so fixed by the Government is so inadequate that it would become simply unviable for the petitioners to run their physiotherapy course.

4. Appearing for the petitioners learned advocate

Shri D.C. Dave and Shri Saurin Mehta jointly submitted that the Government committed gross error in fixing the fees for physiotherapy course of self finance colleges at the rate of Rs. 35,000/- p.a. for payment seats. They submitted that even for commerce students, the Government had fixed fees at the rate of Rs. 25,000/- p.a. or more. They submitted that physiotherapy course require creation of extensive infrastructure in the form of laboratory and tie up with hospitals for practical training. This would require substantial investment. Qualified teaching staff would also have to be engaged.

4.1 They further submitted that the Committee formed by the Government collected material without disclosing the same to the petitioners. They pointed out that such material was taken into account and relied upon by the Committee for fixing the fee structure.

5. On the other hand, learned AGP Ms. M.L. Shah

opposed the petitions. She submitted that the Committee invited suggestions and objections from all quarters including the petitioners and after taking into consideration material on record, prescribed the fee structure which should not be interfered with.

6. Having heard learned advocates appearing for the parties, it can be seen that the petitioners are aggrieved by the fee structure provided for by the Government at the rate of Rs. 35,000/- p.a. for payment seats for their Physiotherapy course. It is not in dispute that earlier the Government had provided fee structure of Rs. 60,000/- p.a. per student for the very same course. Subsequently, as noted earlier though for merit seats, fee was revised from Rs. 2000/- p.a. to Rs.5000/- p.a., for payment seats, the same was reduced from Rs. 60,000/-p.a. to Rs. 35,000/-p.a.. In doing so, as rightly pointed out by learned advocates for the petitioners, the Government took into account, certain materials which were never disclosed to the

petitioners. In the impugned order dated 19-10-2002 itself, there is a reference to the suggestions made by the Committee and the report submitted to the Government thereof. Admittedly, these reports or the materials which formed the basis of these reports were not disclosed to the petitioners. In absence of such an exercise, the petitioners would not have adequate opportunity to represent their case. In fact, all the resolutions of the Government are completely silent on the basis on which fee structure is fixed. If the resolutions are based on some reports of the Committees, such reports are not made available to the petitioners. Therefore, basis for fixation of such fee structure has remained obscure. In any case, the petitioners are completely under dark about the material which weighed with the Committee and in turn with the Government in prescribing a certain fee structure.

7. Considering these aspects of the matter, I find that the Government is required to take a fresh

decision after giving the petitioners a proper opportunity of being heard. For the above purpose, impugned order dated 19-10-2002 is quashed. The respondents shall pass fresh orders after supplying to the petitioners any material that the authorities wish to place reliance upon in fixing the fee structure and also provide an opportunity to the petitioners to produce additional rebuttal material if they so desire. This exercise shall be completed expeditiously and preferably within a period of three months from the date of receipt of a copy of this order. Until such time it is done, the petitioners shall continue to recover fees only at the rate prescribed by the Government in resolution dated 19-10-2002 subject to further orders that may be passed.

8. It may be noted that any rate revision considered by this Court would have direct effect on concerned students. In absence of such students therefore, ordinarily it would not have been open for this Court to grant any relief.

However, considering the fact that the petitioner-colleges have obtained an undertaking from the students to abide by the result of this petition, by virtue of which students are well aware about the pending litigation and considering the fact that this Court has only remanded the issues for reconsideration by the Government, in facts of this case, I find no inhibition in entertaining the petition. However, it would be appropriate for Government to put the students to notice about exercise of fresh consideration of fee structure and permit the such students to make representations if they so wish.

9. With these directions, the petitions are allowed to the above extent and are disposed of accordingly. Rule made absolute to the above extent with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)

(raghu)